IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13758 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950JJJJJJJJJJJJJJJ : NO

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5. Whether it is to be circulated to the Labour Courts & Industrial Tribunals ? :

SONI RAMESHKUMAR BHOGILAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13758 of 1993

MR PH PATHAK for Petitioner No. 1

Mr. H.D.Dave, AGP for Respondent No. 1

MR NITIN N PANDYA for Respondents No. 2-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Pathak for the petitioner, Mr. Dave, learned AGP for the respondent State and Mr. Nitin Pandya, learned advocate for respondents no. 2 and 3. This Court has issued rule in this matter and notice as to interim relief was also issued by making it returnable on 9th December, 1993. Thereafter, this court has again issued rule on 18th August, 1994 and the matter was fixed for final disposal. The facts of the case of the petitioner herein is that the services of the petitioner were terminated on 14th March, 1984 by the respondent and the said action of termination of his services was challenged by the petitioner by raising industrial dispute by filing reference No. 269 of 1987 wherein the labour court has passed award on 13th March, 1992 and the petitioner has been ordered to be reinstated in service without back wages for the intervening period.

During the course of hearing, learned advocate Mr. Pathak appearing for the petitioner has submitted that though the reinstatement has been granted to the petitioner, the respondents have not granted continuity of service to the petitioner. According to his submission, reinstatement would include continuity of service too. However, since the labour court has not clearly stated so while making award of reinstatement in favour of the petitioner without back wages for the intervening period, the respondents have not given him continuity of service and, therefore, present petition has been filed by the petitioner for the purpose of clarification that the word 'reinstatement' shall include 'reinstatement with continuity of service'.

Learned AGP Mr. Dave appearing for the State Authority has submitted that the labour court has not specifically directed to reinstate the petitioner with continuity of service for the intervening period. According to his submission, the petitioner cannot be permitted to read the thing which is not there in the order made by the labour court and, therefore, the petitioner is not entitled for such relief.

I have considered the submissions made by both the learned advocates. There are ways of granting order of reinstatement by the labour court. If the order of reemployment would have been passed by the labour court, then, naturally, continuity of service would not have

been there but once reinstatement has been granted, it would include continuity of service too, impliedly. This aspect has been considered by the apex court in case of Sanat Kumar Dwivedi versus Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others reported in 2001 AIR SCW 2430. In para 3 of the said decision, the apex court has observed as under :

"3. It is clarified that this order will not be treated to be resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessarily meant that the continuity of service was implicit in the reinstatement. Even condition Nos. 1 and 2 of the order of reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given. "

Similarly, this court has also examined this aspect in case of Vasantika R. Dalia versus Baroda Municipal Corporation reported in 1998 - I CLR 32. In para 2 of the said judgment, it has been observed by this Court as under :

"2. The present petitioner workman had also filed Special Civil Application NO. 5497 of 1998 contesting for the back wages and consequential reliefs and, thus, Special Civil Application filed by the workman was dismissed and the notice was discharged. The award dated 28.3.1988 as aforesaid thus attained the finality. It appears that this award dated 28.3.1988 granting relief of reinstatement to the workman was not implemented by the respondent corporation and, therefore, a miscellaneous civil application no. 655 of 1988 in the nature of contempt application had been filed by the petitioner workman and thus Misc. Civil Application No. 655 of 1988 was decided by the Division Bench while noticing the statement of learned Counsel Mr. P.G. Desai for the respondent that it had complied with the direction given by the Labour Court in as much as the petitioner has been reinstated in service.The Division Bench has also observed that there was some delay in reinstating the petitioner on the original post and, therefore, the statement of

Mr. Desai was also noted that the wages for the period for which the delay had been caused in complying with the direction will be paid to her on or before 12.10.1990. In view of this statement, the Division Bench found that the application did not survive and the same was disposed of as having become infructuous In this background, the dispute has now precipitated between the parties about the continuity of service, i.e. from January, 1977 to 23.8.1988 when she was reinstated on the basis of the award dated 28.3.1988. The Assistant Municipal Commissioner, 5th Zone, Baroda has passed an order that all the grievances of the petitioner were included in Special Civil Application NO. 5497 of 1988 and this Special Civil Application had been rejected on 18.6.1992 and, therefore, her request for granting continuity of service cannot be entertained. This order dated 30.10.1996 passed by the Assistant Municipal Commissioner, 5th Zone, Baroda is under challenge in this petition. Though it is mentioned in the award dated 28.3.1988 that the relief of reinstatement is granted while denying the back wages, nothing has been said in the positive terms with regard to the continuity of service or otherwise but the fact remains that the relief of continuity has not been denied by any specific mention as has been done for the backwages. Thus, the petitioner may have failed before the Division Bench in getting the relief of back wages for the intervening period but that does not mean the forfeiture of the continuity of the service because it is not a case of denying the continuity of service by and positive penal order. The rejection of the petitioner's special civil application no. 5497 of 1988 on 18.6.1992 only means that her claim for the back wages was not accepted by this Court nor it can be said on the basis of the order passed in Miscellaneous Civil Application No. 655 of 1988 on 28.9.1990 that everything due to the petitioner under the award had been given in facts of a given case. If the Court comes to the conclusion that the contempt proceedings are not warranted, the Court may not proceed to initiate the contempt proceedings but the mere fact that the Court does not initiate the contempt proceedings does not mean that the rights of the party if they are otherwise available to her on the basis of the award passed after adjudication would come to an

end. An order of action may not be contemptuous per se, still it may be illegal order. However, every illegal order may not be a contemptuous order and, therefore, the rejection of the application in the nature of seeking contempt proceedings would not impeach upon otherwise illegal order or action. In this view of the matter, in my considered opinion, neither the rejection of the petitioner's special civil application no. 5497 of 1988 on 18.6.1992 nor the rejection of Misc. Civil Application No. 655 of 1988 in the nature of contempt proceedings on the ground of being infructuous by the Division Bench comes in the petitioner's way for claiming relief of continuity of service on the strength of the award dated 28.3.1988, if at all it is available to her on the basis of that award itself. It is, therefore, plain and simple case of interpretation of the relief granted by the Labour Court while passing the award dated 28.3.1988. By this award, the relief of reinstatement has been granted but the relief of back wages has been denied specifically and the relief of continuity of service has not been denied in any terms except that although the relief of reinstatement the word 'continuity' has not been mentioned. It may be straightway observed that once the relief of reinstatement is granted, the continuity of service is the direct consequence rather inherent in the relief of this nature, more particularly when the Division Bench has already held that the termination was void, If the termination order was void, the meaning that in the eye of law, the relief of reinstatement has to be granted as if the impugned award had never been passed. The question of back wages is, therefore, dependent on variable factors of gainful employment during the period of enforced idleness and, therefore, in a given case, the relief of back wages may not be granted depending upon the finding on the question of gainful employment or otherwise during the period of enforced idleness. When the relief of reinstatement is granted and the continuity of service is not specifically denied, the party has to be regulated to the same position as was held by it at the time of termination. When the order of termination has been found to be void, the petition holds the relief of reinstatement with no mention of specific denial of continuity of service, the

concerned workman has to be regulated to the position which was obtaining at the time of termination of her services and there is no question of denying the continuity of service for the period for which the services have been interrupted on account of an unlawful and void order."

Recently, the apex court has considered the same question in case of Gurpreet Singh and State of Punjab and others reported in 2002 (92) FLR 838. The relevant observations made by the apex court in 1 and 2 of the said judgment are reproduced as under :

"Leave granted.

The Plaintiff is in appeal against the impugned judgment of the High COurt of Punjab and impugned judgment of the High Court of Punjab and services stood terminated and he filed the suit for declaring the order of termination null and void. The suit was dismissed. The lower appellate court, however, on reappreciation of the materials on record, came to the conclusion that the order passed by the D.I.G. must be held to be illegal and consequently directed that the plaintiff should be reinstated in service. Having directed so, the first appellate court categorically held that the plaintiff will not be entitled for any arrears of salary for the period for which he has not served. The plaintiff assailed the appellate decree by filing a second appeal claiming that he would be entitled to the arrears of salary. The High Court by the impugned order not only confirmed the decree of the lower appellate court that the plaintiff will not be entitled to any arrears of salary but also further added that the plaintiff will not get his continuity of service. The plaintiff therefore is in appeal before this Court.

2. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be

> sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity in the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above.

In the instant case also, while granting the relief of reinstatement, the relief of back wages has been specifically denied by the labour court whereas the benefit of continuity of service has not been denied specifically. Therefore, in view of the observations made by the apex court as well as this court in aforesaid three decisions, the petitioner is entitled for such benefit of continuity of service for the period for which the services have been interrupted on account of an unlawful action of the respondents.

Learned advocate Mr. Pathak has submitted that as regards the benefits which have been denied to the petitioner for want of clarification to that effect in the award, the petitioner will approach the respondent authority by way of separate representation within two weeks from the date of receipt of copy of this order. Accordingly, as and when such representation is received by the respondents in that regard, it is directed to the respondents to consider the same in light of the observations made by this order in accordance with law within two months from the date of receipt of such representation from the petitioner. With these observations and directions, this petition is disposed of with a liberty in favour of the petitioner to challenge the orders that may be made by the respondents upon the representation that may be made by the petitioner before the appropriate forum in accordance with law, if such orders are adverse to the petitioner.

Rule is made absolute in terms indicated hereinabove with no order as to costs.

7.3.2002. (H.K. Rathod,J.)

Vyas